

66-6770

**OFFICIAL FILE**  
**ILLINOIS COMMERCE COMMISSION STAFF REPORT TO THE COMMISSION**  
**November 14, 2006**

**ORIGINAL**

**SUBJECT:** Initiating a proceeding pursuant to Section 11(m) of the Illinois Underground Utility Facilities Damage Prevention Act and 83 Ill. Adm. Code 265.310

**SUMMARY:**

Staff recommends that the Illinois Commerce Commission ("Commission") enter an order initiating a proceeding, pursuant to Section 11(m) of the Illinois Underground Utility Facilities Damage Prevention Act ("Act") [220 ILCS 50] and 83 Ill. Adm. Code 265.310, to determine whether Vande Geest Plumbing and Heating, Inc. ("Vande Geest") violated Section 7 of the Act and to determine the amount of penalty that should be assessed.

**BACKGROUND:**

Pursuant to 83 Ill. Adm. Code 265.100, MidAmerican Energy Company ("MidAmerican") submitted four incident reports to the Commission Staff ("Staff") reporting possible violations of the Act by Vande Geest. Larry Vande Geest is the President of Vande Geest, which is located at 3717 5<sup>TH</sup> Avenue, Moline, Illinois, 61265. According to records from the Illinois Secretary of State, the designated agent for Vande Geest is Ira Vande Geest at the same address.

MidAmerican is a public utility as defined in Section 3-105 of the Public Utilities Act [220 ILCS 5/3-105] and is an owner or operator of "underground utility facilities" as that term is defined in Section 2.2 of the Act, located throughout western Illinois, including natural gas distribution facilities installed beneath the surface of the ground at each of the incident locations detailed in this report. In addition, JULIE, Inc., whose headquarters is located at 3275 Executive Drive, Joliet, IL 60431, is the State-Wide One-Call Notice System as defined in Section 3 of the Act.

**Incident 1 – JULIE Enforcement Case No. 0054-05**

On April 25, 2005, MidAmerican submitted an incident report to the Staff reporting that on April 21, 2005, Vande Geest violated the Act while excavating at 4034 27<sup>th</sup> Avenue, Rock Island, Illinois. In its review of this incident, Staff considered evidence submitted by MidAmerican and Vande Geest. Based upon that information, Staff alleges that Vande Geest willfully violated Section 7 of the Act based upon the following:

- (1) At 4:12p.m. on April 19, 2005, Vande Geest provided notice to utility facility operators through the State-Wide One-Call Notice System ("JULIE"), for excavation to occur at 4034 27th Avenue, Rock Island, Illinois. Vande Geest reported a work date of April 20, 2005. The JULIE ticket was a short notice ticket and the number was A1093929.

ILLINOIS  
COMMERCE COMMISSION  
NOV 29 1:27  
CLERK'S OFFICE

- (2) On April 21, 2005, while excavating at 4034 27<sup>th</sup> Avenue, Rock Island, Illinois, Vande Geest hit and damaged a ½-inch plastic gas service owned and operated by MidAmerican.
- (3) MidAmerican states that Great Plains Locating Service ("GPLS") responded to dig #A1093929 on April 20, 2005, at 9:58am, and accurately located and marked the gas service line at 4034 27<sup>th</sup> Avenue. On April 21, 2005, at approximately 2:55pm, Mr. Joe Sandner, GPLS Supervisor, called and alerted MidAmerican of a suspected, un-reported gas service line hit at 4034 27<sup>th</sup> Avenue. At approximately 3:10pm, MidAmerican dispatched a MidAmerican Representative to investigate the alleged damage. MidAmerican found Vande Geest had hit and severed their underground gas service line to the residence at 4034 27<sup>th</sup> Avenue. Vande Geest did not report the damage to either MidAmerican or to JULIE, made unauthorized, incorrect, and illegal repairs to the gas service line, and then re-lit the homeowner's gas pilots.
- (4) Vande Geest states that on April 21, 2005, they were excavating to make sewer repairs at 4034 27<sup>th</sup> Avenue, when the damage to MidAmerican's gas service occurred. Vande Geest states that the reason the gas service line was damaged is because it was mis-marked by 30 inches. Vande Geest states that they hand dug 24 inches in both directions from the gas line markings prior to hitting the line with a backhoe. Vande Geest states that they called MidAmerican and JULIE and reported the damage, however, Vande Geest provided no date or time the alleged calls were made.

On June 28, 2005, Staff issued a Notice of Violation to Vande Geest regarding violations of Section 7 of the Act. Staff found that Vande Geest failed to call JULIE to report the damage, failed to call MidAmerican to report the damage, and failed to work with MidAmerican in a cooperative and expeditious manner to repair the affected utility facility. According to Section 11(b) of the Act, the Commission has authority to assess a penalty of up to \$2500 for each of these violations. Section 11(j) of the Act specifies that when a penalty is warranted, the following criteria shall be used in determining the magnitude of the penalty:

- (1) gravity of noncompliance;
- (2) culpability of offender;
- (3) history of noncompliance;
- (4) ability to pay penalty;
- (5) show of good faith of offender;
- (6) ability to continue business; and
- (7) other special circumstances.

Based on the seriousness of these violations, where Vande Geest did not inform MidAmerican of the damage and made its own repairs, Staff found that the maximum penalty was warranted. Having found three violations of Section 7 of the Act, Staff assessed a penalty against Vande Geest in the amount of \$7,500. Vande Geest did not respond to Staff's Notice of Violation.

On August 16, 2005, pursuant to 83 Ill. Adm. Code 265.230, Staff provided notice to Vande Geest that on September 8, 2005, case number 0054-05 was scheduled to be heard by the Underground Damage Prevention Advisory Committee ("Committee"). On September 8, 2005, Staff presented this case to the Committee. Vande Geest was not present. The Committee voted to adopt Staff's recommendation contained in its June 28, 2005, Notice of Violation. In a letter dated September 8, 2005, Staff informed Vande Geest of the Committee's decision. Vande Geest did not respond.

#### **Incident 2 – JULIE Enforcement Case No. 0073-05**

On May 11, 2005, MidAmerican Energy Company ("MidAmerican") submitted an incident report to the Staff reporting that on February 11, 2005, Vande Geest violated the Act while excavating at 2911 43<sup>rd</sup> Street, Rock Island, Illinois. In its review of this incident, Staff considered evidence submitted by MidAmerican and Vande Geest. Based upon that information, Staff alleges that Vande Geest willfully violated Section 7 of the Act based upon the following:

- (1) On February 9, 2005, at 9:51am, Vande Geest provided notice to utility operators through the State-Wide One-Call Notice System ("JULIE") for excavation to repair a sewer at 2911 43<sup>rd</sup> Street, Rock Island, Illinois. JULIE assigned dig #A0400422 to this short-notice locate request. The work start date and time was listed as February 11, 2005, at 8:30am.
- (2) On February 11, 2005, while excavating for sewer repairs at 2911 43<sup>rd</sup> Street, Rock Island, Illinois, Vande Geest damaged a 1- inch gas service line, owned and operated by MidAmerican.
- (3) MidAmerican states that Mr. Joe Sandner, a supervisor with Great Plains Locating Service ("GPLS"), notified MidAmerican of a suspected, un-reported gas service line hit at 2911 43<sup>rd</sup> Street, Rock Island, Illinois. MidAmerican reviewed damage reports and did not find any record of a damage report for that address. MidAmerican met with the customer that resides at 2911 43<sup>rd</sup> Street, on May 11, 2005, who then verified the damage by Vande Geest and provided photographs. MidAmerican dispatched a repair crew to the premise to dig up and verify the damage. MidAmerican found Vande Geest had hit and severed their underground gas service line and tracer wire, at 2911 43<sup>rd</sup> Street. The severed gas line also fed customers at 2913 43<sup>rd</sup> Street and at 4312 29<sup>th</sup> Street. Vande Geest did not report the damage to either MidAmerican or to JULIE, made unauthorized, incorrect, and illegal repairs to the gas service line and tracer wire, and then re-lit the homeowner's gas pilots.
- (4) VandeGeest states that they were excavating to make sewer repairs when the damage to MidAmerican's gas line occurred. Vande Geest states that the reason why the gas service was cut was because they were excavating at a duplex and only one half of the duplex was marked. Vande Geest alleges that they requested that the entire front yard be located. Vande Geest states that they called MidAmerican and JULIE, on February 11, 2005, and reported the damage.

On July 29, 2005, Staff issued a Notice of Violation to Vande Geest regarding violations of Section 7 of the Act. Staff found that Vande Geest failed to call JULIE to report the damage, failed to call MidAmerican to report the damage, and failed to work with MidAmerican in a cooperative and expeditious manner to repair the affected utility facility. According to Section 11(b) of the Act, the Commission has authority to assess a penalty of up to \$2500 for each of these violations.

Based on the seriousness of these violations, where Vande Geest did not inform MidAmerican of the damage and made its own repairs, Staff found that the maximum penalty was warranted. Having found three violations of Section 7 of the Act, Staff assessed a penalty in the amount of \$7,500. Vande Geest did not respond to Staff's Notice of Violation.

On August 31, 2005, pursuant to 83 Ill. Adm. Code 265.230, Staff provided notice to Vande Geest that on September 8, 2005, case number 0073-05 was scheduled to be heard by the Underground Damage Prevention Advisory Committee ("Committee"). On September 8, 2005, Staff presented this case to the Committee. Vande Geest was not present. The Committee voted to adopt the Staff's recommendation contained in its July 29, 2005, Notice of Violation. In a letter dated September 8, 2005, Staff informed Vande Geest of the Committee's decision. Vande Geest did not respond.

### **Incident 3 – JULIE Enforcement Case No. 0165-05**

On August 19, 2005, MidAmerican submitted an incident report to the Staff reporting that on August 3, 2005, Vande Geest violated the Act while excavating at 1310 53<sup>rd</sup> Street, Moline, Illinois. In its review of this incident, Staff considered evidence submitted by MidAmerican and Vande Geest. Based upon that information, Staff alleges that Vande Geest willfully violated Section 7 of the Act based upon the following:

- (1) On July 28, 2005, at 7:47am, Vande Geest provided notice to utility operators through the State-Wide One-Call Notice System ("JULIE") for excavation to install a new water service at 1314 53<sup>rd</sup> Street, Moline, Illinois. JULIE assigned dig # X2090222 to this request and the start date and time was shown as August 1, 2005, at 8:00am
- (2) On August 3, 2005, while excavating at 1310 53<sup>rd</sup> Street, Moline, Illinois, Vande Geest damaged a 1¼-inch gas main, owned and operated by MidAmerican. Vande Geest called JULIE at 3:03pm, on August 3, 2005 and reported that they hit a gas line. JULIE issued the notice to owners and operators at 3:03 pm, under dig # A2152624. At approximately 3:18pm, on August 3, 2005, Vande Geest called MidAmerican and reported the damage.
- (3) MidAmerican states that Vande Geest severed their main while excavating at approximately 10:30am, on August 3, 2005. MidAmerican states that Vande Geest severed the main, pinched off the supply side and then continued to excavate to install water additions. Then at 3:18pm, almost 5 hours after the damage

and after backfilling most of the open trench, Vande Geest called MidAmerican to report the damage.

- (4) Vande Geest states that they were excavating to make water additions at 1314 53<sup>rd</sup> Street, Moline, Illinois, when the damage to MidAmerican's gas main occurred. Vande Geest states that the reason the gas service line was damaged is because it was not marked. Vande Geest states that the incident site was not a street or avenue, but a private driveway that led to housing behind 1314 53<sup>rd</sup> Street, Moline, Illinois.

On January 10, 2006, Staff issued a Notice of Violation to Vande Geest regarding violations of Section 7 of the Act. Staff found that Vande Geest failed to call JULIE to report the damage, failed to call MidAmerican to report the damage, and failed to work with MidAmerican in a cooperative and expeditious manner to repair the affected utility facility. According to Section 11(b) of the Act, the Commission has authority to assess a penalty of up to \$2500 for each of these violations.

Based on the seriousness of these violations, where Vande Geest did not immediately inform MidAmerican of the damage and their continued disregard to the safety of the public and its employees, Staff found that the maximum penalty was warranted. Having found three violations of Section 7 of the Act, Staff assessed a penalty in the amount of \$7,500. Vande Geest did not respond to Staff's Notice of Violation.

On March 16, 2006, pursuant to 83 Ill. Adm. Code 265.230, Staff provided notice to Vande Geest that on April 13, 2006, case number 0165-05 was scheduled to be heard by the Underground Damage Prevention Advisory Committee ("Committee"). On April 13, 2006, Staff presented this case to the Committee. Vande Geest was not present. The Committee voted to adopt the Staff's recommendation contained in its January 10, 2006, Notice of Violation. In a letter dated April 18, 2006, Staff informed Vande Geest of the Committee's decision. Vande Geest did not respond.

Section 7 of the Act requires that:

In the event of any damage to or dislocation of any underground utility facilities or CATS facilities in connection with any excavation or demolition, emergency or nonemergency, the person responsible for the excavation or demolition operations shall immediately notify the affected utility and the State-Wide One-Call Notice System. Owners and operators of underground utility facilities that are damaged and the excavator involved shall work in a cooperative and expeditious manner to repair the affected utility.

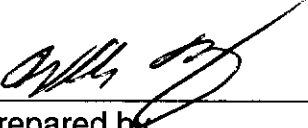
Section 11(m) of the Act provides:


If, after the Advisory Committee has considered a particular contested penalty and performed its review functions under this Act and the Commission's rules, there remains a dispute as to whether the Commission should impose a penalty under this Act, the matter shall

proceed in the manner set forth in Article X of the Public Utilities Act, including the provisions governing judicial review.

**RECOMMENDATION:**

Pursuant to Section 11(m) of the Act and 83 Ill. Adm. Code 265.310, Staff requests the Commission enter the attached order to initiate a proceeding to determine whether in the aforementioned incidents, Vande Geest Plumbing and Heating, Inc. violated Section 7 of the Act and to determine the amount of any penalty that should be assessed.

  
\_\_\_\_\_  
Prepared by  
William Riley  
JULIE Enforcement Manager

  
\_\_\_\_\_  
Approved by  
Harry L. Stoller  
Energy Division Director